HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION No.19346 OF 2007

Between:

Mr. G.Alwal Reddy

. . .Petitioner

AND

The State Bank of India and another

. . .Respondents

:: ORDER ::

Counsel for the petitioner : Shri Immaneni Rama Rao

Counsel for respondent No.1 : None

29th October, 2007

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PER G.S.SINGHVI, CJ

This is a petition for quashing proclamation of sale dated 6.8.2007 issued by the Recovery Officer, Debts Recovery Tribunal, Hyderabad (respondent No.2 herein) in O.A.No.158 of 2002 and R.P.No.587 of 2003 for sale of the land mortgaged by the petitioner and two others as security for repayment of loan given by the State Bank of India, ADB, Kalwakurthy Branch, Mahbubnagar District (for short, 'the bank').

Since the respondents have not filed counter affidavit, we shall decide the writ petition by assuming that the averments contained in the affidavit of the petitioner are correct.

The petitioner took loan of more than Rs.25,00,000/- from the bank for establishing a cattle breeding farm. He along with Sarvasri B. Mahipal Reddy and N. Venkateswara Rao mortgaged Ac.28.04 guntas of land situated at Revalli Village, Midjil Mandal, Mahbubnagar District as security for repayment of the loan. In the year 2002, the bank filed an application under Section 19 of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, 'the 1993 Act') for recovery of the loan with interest by alleging that the borrower has failed to repay the amount of loan. The application was decreed by the Debts Recovery Tribunal at Hyderabad and recovery certificate was issued for Rs.34,38,755/-. Thereafter, respondent No.2 issued the impugned proclamation for sale of the mortgaged property.

The petitioner has questioned the proclamation issued by respondent No.2 by contending that the bank has not undertaken

exercise for valuation of the fixtures over the land and that if he is allowed to dispose of the fixtures, he will be in a position to repay the amount due to the bank.

We have heard Shri Immaneni Rama Rao and perused the record. In our opinion, it is not necessary to decide the points raised in the petition because the learned counsel gave out that in terms of interim order dated 11.9.2007 passed in WPMP.No.24872 of 2007, his client has already deposited Rs.5,00,000/- with the bank and that he shall pay the balance amount together with interest within a period of five months from today. He also referred to the undertaking given by the petitioner on 11.9.2007 for repayment of the outstanding dues.

In view of the above, the writ petition is disposed of in the following terms:

1) The petitioner shall pay the entire balance amount together with interest to respondent No.1 within a period of five months from today in four equated instalments.

2) The first instalment shall be paid on or before 03.12.2007.

3) The remaining three instalments shall be paid by 7th January, 7th February and 7th March, 2008.

4) If the petitioner pays the entire amount, then the proceedings initiated by the bank under the 1993 Act shall come to close.

5) If the petitioner fails to pay either of the instalments, then this order shall stand automatically vacated and respondent No.2 shall be free to auction the property specified in the proclamation. In that event, neither any civil Court nor the Tribunal shall pass any order of injunction against the auction of the mortgaged property.

G.S.SINGHVI, CJ

29th October, 2007

G.ROHINI, J

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